SUPREME COURT, U. S.

No. 865

FILED

NOV 30 1967

JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1967

E. W. BUSCHMAN CO.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

EDWARD STATLAND
MILLER, BROWN AND GELDEHORN
1201 17th St., N.W.
Washington, D.C. 20036

BAUER, SWAIN & MORELLI
By ARNOLD MORELLI
905 Executive Building
Cincinnati, Ohio 45202

COURT PRINTING CO., INC. — Law Printers — 509 Walnut Street, Cincinnati, Ohio 45202

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Federal Statutes Involved	2
Statement	2
Reasons for Granting the Writ	5
Conclusion	10
Appendix A—Opinion and Judgment of Court of Appeals	11
Appendix B—Opinion of the National Labor Relations Board	17
Appendix C—Applicable Portions of the National Labor Relations Act	20

CITATIONS

CASES

Armco Steel Corporation v. NLRB, 344 F.2d 621 (CA 6 1965)	4
Ford Motor Co. v. Huffman, 345 U.S. 330 (1953)	9
General Motors, 158 NLRB No. 149, 1966 L. C. par. 20,917	4
General Motors v. NLRB, 345 F.2d 516 (CA 6 1955)	4
Lawson Milk Company v. NLRB, 317 F.2d 756 (CA 6 1963)	7
Mastro Plastics Corp. v. NLRB, 350 U.S. 270 (1956)	9
May Department Stores Co., 59 NLRB 976, 981, n. 17	6
Mid-States Metal Products, 156 NLRB No. 90, 1966 L. C. Par. 20,165	4
NLRB v. American Nat'l Ins. Co., 343 U.S. 395 (1952)	9
NLRB v. Babcock and Wilcox, 351 U.S. 105 (1956)	8

Page

NLRB v. Borg-Warner Corp., 356 U.S. 342 (1957) ... 9
NLRB v. Gale Products, 337 F.2d 390 (CA 7 1964) .. 4, 5
NLRB v. General Motors Corp., 373 U.S. 734 (1963) 9
NLRB v. Murray Ohio Company, 326 F.2d 509, 514 (CA 6 1964) 7
NLRB v. News Syndicate Co., 365 U.S. 695 (1961) ... 9
Radio Officers v. NLRB, 347 U.S. 17 (1954) 9
Republic Aviation Corporation v. NLRB, 324 U.S. 793 (1945) 8
Teamsters Local 357 v. NLRB, 365 U.S. 667 (1961) .. 9
United Steel Workers v. Warrior and Gulf Refining Company, 363 U.S. 574 (1960) 5, 6, 9

STATUTES

National Labor Relations Act:
Sec. 7, 29 U.S.C. Sec. 157 .....2, 3, 5, 6, 7, 8, 10
Sec. 8(a)(1), 158(a)(1) 2, 3
Sec. 10(c), Sec. 160(c) 2, 8
28 U.S.C. Sec. 1254(1) 2

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. ———.

E. W. BUSCHMAN CO.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

E. W. Buschman Co. (hereinafter called "Petitioner") prays that a writ of certiorari issue to review the judgment and decree of the United States Court of Appeals for the Sixth Circuit enforcing an order of the National Labor Relations Board against the Petitioner.

OPINIONS BELOW

The decision and order of the National Labor Relations Board entered June 28, 1965 is reported at 153 NLRB No. 65. The opinion of the United States Court of Appeals for the Sixth Circuit entered July 20, 1967 is reported at 380 Fed.2d 255.

JURISDICTION

The judgment and decree of the United States Court of Appeals for the Sixth Circuit was entered on July 20, 1967, and the Petitioner's motion for a rehearing was denied on September 5, 1967. The jurisdiction of this Court is invoked under 62 *Stat.* 928 (28 U.S.C. Sec. 1254 (1)) and 61 *Stat.* 136 (29 U.S.C. Sec. 160 (e)).

QUESTION PRESENTED

Whether Petitioner has a duty to rehire three employees, who the NLRB found were discharged for circulating a petition on company premises in violation of Sec. 8 (a) (1) of the Act, where the collective bargaining agreement prohibited such solicitation and circulation, and thereby waived whatever rights these employees had to engage in such conduct.

FEDERAL STATUTES INVOLVED

The primary statutory provisions involved are Sections 7, and 8 (a) (1) of the National Labor Relations Act (hereinafter called the "Act"), 61 *Stat.* 136, (29 U.S.C. Sections 157, and 158 (a) (1)). All pertinent parts appear in Appendix B *infra* pp. 17 to 19.

STATEMENT

In July, 1963, the petitioner and the duly certified local bargaining union (hereinafter referred to as the "Local") were involved in negotiations for a new contract to succeed the one that was to expire on July 23, 1963 (J.A. 6a, 76a, 127a). The petitioner submitted a proposal to Pat Williams, a representative of the International Union. That evening the Local held a meeting presided over by Williams. The members of the Local rejected the offer. Three

employees involved in this case, Bole, Feltner and Clouse — who were also stewards — advocated a strike vote. Williams strongly opposed any such endeavor and terminated the meeting before a vote was taken.

The three stewards then prepared a petition to prohibit Williams from being present at any future contract negotiations between the petitioner and the Local. One of the three was involved in signing this during working time. The petition was made available during working time for signing and was circulated exclusively on the premises of the petitioner.

Later that morning, the three stewards were discharged. An unfair labor practice charge was filed against petitioner because of (1) the discharge of the three employees and (2) the existence of a no solicitation rule, Shop Rule No. 18. Said rule had come into existence with the approval of the Local. That rule read:

> "12. Shop Conduct:
> "Conduct of a nature listed below is not permitted, and if indulged in, is considered cause for suspension or discharge: * * * 18. Soliciting or collecting contributions for any purpose whatsoever on our Company premises without the prior approval of management."

The trial examiner found that shop rule 18 prohibited all solicitation for any purpose in petitioner's plant. He concluded the rule thereby interfered with Section 7 rights, resulting in an 8(a) (1) violation (J.A. 12a). Next, the trial examiner disbelieved the grounds for discharge claimed by the petitioner.[1] He found that the employees

---

[1] The petitioner claimed that the grounds for discharge were the creation of disunity among employees, failure to remain at their work stations during working hours, insubordination to supervisors, failure to do work properly, and an attempt to persuade others not to work overtime (J.A. 9a-10a).

were discharged because of the preparation and circulation of the petition. The NLRB affirmed the trial examiner.

The Sixth Circuit reversed the trial examiner's finding that shop rule No. 18 was invalid, because it had been enacted with the approval of the union and under a provision of the collective bargaining agreement. This was based on prior precedents of the Sixth Circuit and Seventh Circuit[2] which the NLRB has refused to follow.[3] The Sixth Circuit quoted from one of its prior cases the following:

> *"Whatever right employees had under Section 7* to distribute Union literature on Company property *may be waived* by their collective bargaining representative. The contractual *waiver of rights* of equal or greater significance has been upheld." (emphasis added) (Appendix A *infra* page 11)

On the other hand, it affirmed the Board's finding that the discharge of the three employees was a violation of Section 8 (a) (1) of the Act, because they had been fired for preparing, signing and circulating the petition. This, said the Sixth Circuit was an interference with their Section 7 rights.

---

[2] *NLRB* v. *Gale Products*, 337 F.2d 390 (CA 7, 1964); *General Motors* v. *NLRB*, 345 F.2d 516 (CA 6, 1955); *Armco Steel Corporation* v. *NLRB*, 344 F.2d 621 (CA 6, 1965).

[3] *Mid-States Metal Products*, 156 NLRB No. 90, 1966, L. C. par. 20,165; *General Motors*, 158 NLRB No. 149, 1966 L. C. par. 20,917.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the Sixth Circuit (1) decided a federal question in a way that is in conflict with the rationale of the applicable decisions of the Supreme Court and (2) has decided an important question of federal law which has not been, but should be settled, by the Supreme Court.

The Supreme Court has stated that a collective bargaining agreement is the rule of government, or the "constitution" controlling the quasi-governmental relationship between employer, employee and the union in the plant. As was stated in *United Steel Workers* v. *Warrior and Gulf Refining Company,* 363 U.S. 574, 578-9-80 (1960):

> "The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsman cannot wholly anticipate. * * * The collective agreement covers the whole employment relationship. It calls into being a new common law — the common law of a particular industry or of a particular plant. * * * A collective bargaining agreement is an effort to erect a system of industrial self-government."

When a no solicitation rule on company premises is enacted by agreement between the duly authorized bargaining agent of the employees and the employer, it means that whatever Section 7 rights the employees may have had to circulate a petition *on company premises* are no longer in existence. As the quote from the Sixth Circuit above states, these rights of the employees have been waived by their collective bargaining representative. This is the same position that the Seventh Circuit took in *NLRB* v. *Gale Products, supra,* and that the NLRB originally took as

well. The Seventh Circuit quoted in that case with favor the language from *May Department Stores Co.*, 59 NLRB 976, 981, n. 17, which stated (337 F.2d at 391-2):

> "We do find . . . that the employees embraced by these contracts, on the assumption that the latter were entered into by organizations which represented a majority of the employees in an appropriate unit, have thereby effectively bargained away their right to engage in union solicitation on the respondent's premises. Consequently, and so long as the contractual provisions in question remain in effect, the respondent's prohibition against union solicitation on the respondent's premises at all times by employees covered by such contracts is not to be deemed improper."

The combined effect of the Supreme Court's description of collective bargaining agreement in *United Steel Workers* v. *Warrior and Gulf Refining Company, supra,* and the Sixth Circuit's position is that the "system of industrial self-government" established at petitioner's plant was that there was no Section 7 right to circulate a petition. This waiver of Section 7 rights for the three discharged employees occurred when the collective bargaining agreement was entered into three years prior to the discharge.

The trial examiner rejected the motivation for discharge stated by petitioner. He saddled the petitioner with the motive that "the real reason for the (petitioner's) discharging the three stewards was their known participation in the preparation and presentation of the ouster petition to the other employees" (J.A. 43a). Because of their position that the shop rule was invalid, the trial examiner and the Board could then with consistency find that discharges so motivated were violations of the Act. But the Sixth Circuit's position — (a) the shop rule is valid, (b) it constituted a waiver of the employee's Section 7 rights to

circulate a petition and (c) discharges for circulating a petition are a violation of Section 7 rights — is illogical.

The Sixth Circuit, and the Board in their briefs, have argued that petitioner did not assert that these employees were discharged for violation of the shop rule at the time of discharge. That is irrelevant.

> "Management can discharge for good cause, or bad cause or no cause at all. It has, as the matter of its own business affairs, kept freedom with but one specific definite qualification: It may not discharge when the real motivating purpose is to do that which Section 8 (a) (3) forbids." *Schwob Manufacturing Company* v. *NLRB*, 297 F.2d 864, 870 (CA 5, 1962).[4]

Thus the power of management to discharge with or without cause is limited solely by the requisite that it must not interfere with the rights protected by the Act. Petitioner does not have to assert or prove any cause or shop rule. The General Counsel has the burden of proving a violation of the statute.[5] The motivation for discharge that the General Counsel proved — circulation of the petition — was not in violation of the statute because of the waiver of Section 7 rights on company premises. Further that motive *was* ground for discharge under the express provisions of the Shop Rule![6] The petitioner is being required to take back employees because it interfered with Section 7 rights which they did not have. Section 10 (c) of the Act provides:

---

[4] Cited with favor in *NLRB* v. *Murray Ohio Company*, 328 F.2d 509, 514 (CA 6 1964).

[5] *Lawson Milk Company* v. *NLRB*, 317 F.2d 756, 760 (CA 6 1963).

[6] The introduction to the rule states:
"Conduct of a nature listed below is not permitted, and if indulged in, *is considered cause for* suspension or *discharge* . . . ." (emphasis added)

> "No order of the Board shall require the reinstatement of any individual who has been suspended or discharged, * * * if such individual was suspended or discharged for cause."

The effect of the Sixth Circuit's decision is that petitioner is to be punished for interfering with Section 7 rights that are *not* protected by the Act and must rehire the employees and give them thousands of dollars of back wages, even though such *is* prohibited by the Act (Section 10 (c)). At the least, petitioner is entitled to have the decision remanded to the Board for reconsideration of this entire matter in view of the shop rule being a valid limitation on solicitation.

This Court should clarify the federal law as regards the validity of limitations on solicitation rules contained in collective bargaining agreements. Though this court has passed on rules unilaterally imposed by an employer prohibiting solicitation or distribution of literature,[7] it has not passed on the question that is in dispute between the Board, on the one hand, and the Sixth and Seventh Circuits, on the other hand. Hundreds of collective bargaining agreements contain this kind of provision and their validity should be determined. In addition, the *effect* of their existence should be clarified by this Court in order to provide stability in the law.

In addition, the Sixth Circuit's decision on this case is in conflict with a rationale of the applicable decisions of this Honorable Court. This court has many times held that management and the union can enter into agreements significantly limiting what employees can do and what their

---

[7] *Republic Aviation Corporation* v. *NLRB*, 324 U.S. 793 (1945); *NLRB* v. *Babcock and Wilcox*, 351 U.S. 105 (1956).

rights are.[8] As we have noted above from our quote from *United Steelworkers* v. *Warrior & Gulf Nav. Co., supra,* the collective bargaining agreement "is an effort to erect a system of industrial self-government." What the Sixth Circuit has done in effect is to state that such a system is valid, but then refused to give it any effect. Where a matter can be negotiated between the union and employer, then the Board, and *a fortori,* a court has no power to nullify that agreement. In this case the union and the petitioner agreed on a shop rule prohibiting solicitation on the company premises and also agreed as to the *effect* of violation thereof, *i.e.,* violations are grounds for discharge.[9]

By refusing to give *effect* to the agreement between the petitioner and the union, which agreement the Sixth Circuit acknowledged was not in violation of the Act, the

---

[8] No strike or lockout: *Steelworkers* v. *Warrior & Gulf Nav. Co.,* 363 U.S. 574 (1960); *Mastro Plastics Corp.* v. *NLRB,* 350 U.S. 270 (1956).

Management functions: *NLRB* v. *American Nat'l Ins. Co.,* 343 U.S. 395 (1952).

Ballot and recognition: *NLRB* v. *Borg-Warner Corp.,* 356 U.S. 342 (1957).

Union security: *Radio Officers* v. *NLRB,* 347 U.S. 17 (1954).

Hiring hall: *Teamsters Local 357* v. *NLRB,* 365 U.S. 667 (1961).

Hiring by union foremen: *NLRB* v. *News Syndicate Co.,* 365 U.S. 695 (1961).

Seniority credit for military service: *Ford Motor Co.* v. *Huffman,* 345 U.S. 330 (1953).

Agency shop: *NLRB* v. *General Motors Corp.,* 373 U.S. 734 (1963).

[9] It is of course conceded that the shop rule could not be applied in a discriminatory way. As was stated by this Court in the hiring hall situation, *Teamsters Local 357* v. *NLRB,* 365 U.S. 667, 676-7:

> "(T)he hiring hall, under the laws as it stands, is a matter of negotiation between the parties. The Board has no power to compel, directly or indirectly that the hiring hall be included or excluded in collective agreements * * *. Its power * * * is restricted to the elimination of discrimination."

Of course, discriminatory application of the shop rule is no issue here.

Sixth Circuit has failed to follow the rationale of applicable decisions of this Court. This nullifies the attempt to create a "system of industrial self-government."

CONCLUSION

Petitioner respectfully submits that this Court should decide and clarify the federal laws on the powers of unions and management in collective bargaining agreements to limit Section 7 rights of employees on company premises. This case also should be taken in by this Court because the Sixth Circuit has seen fit to disregard the effect of the agreement between the union and the petitioner on a permissible subject of collective bargaining. This conduct by the Sixth Circuit is in conflict with the rationale of the applicable decisions of this Court. For these reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWARD STATLAND
MILLER, BROWN AND GELDEHORN
1701 17th St., N.W.
Washington, D.C. 20036

BAUER, SWAIN & MORELLI
By ARNOLD MORELLI

APPENDIX A

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

No. 17092

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

E. W. BUSCHMAN CO.,
Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

OPINION AND JUDGMENT OF COURT OF APPEALS

(Decided July 20, 1967.)

Before: WEICK, Chief Judge, O'SULLIVAN and CELEBREZZE, Circuit Judges.

CELEBREZZE, Circuit Judge. The National Labor Relations Board seeks enforcement of its Order issued on June 28, 1965, against the E. W. Buschman Company (Company). The Board found that the Company violated Section 8(a)(1) of the Act, 29 U.S.C.A., Section 158, by discharging employees Bole, Clouse and Feltner. The Board's decision and order are reported at 153 N.L.R.B., No. 65.

The Company is engaged in the manufacturing and in-

stallation of mechanical and electrical conveyors. Charles Bole, a layout man in the Company's structural steel department, had worked for the Company for eighteen years, and was an assistant shop steward for the Union. Herman Clouse, a layout man in the gravity department, had worked for the Company for twelve years, and was the chief shop steward. Bernard Feltner, a welder in the gravity department, had worked for the Company for twelve years, and was an assistant shop steward. These three stewards also served as the employee representatives on the Union Bargaining Committee.

In July, 1963, the Union[1] and the Company began negotiating for a new contract to succeed the current contract which was to expire on July 23, 1963. Negotiations were held on July 16th, 18th and 23rd. At the bargaining meeting on July 23rd, Patrick Williams, a Union International Representative, joined the Union negotiations, and at this meeting the Company submitted an offer, which if accepted, would have settled the contractual issues which still remained.

On the evening of July 23rd, Williams, the International Representative, presided at a Union meeting where he submitted to the employees the offer proposed by the Company. The employees voted to reject the Company proposal. Feltner then asked for a strike vote. Williams refused to put the strike motion to a vote and adjourned the meeting. After the meeting, Stewards Bole, Clouse and Feltner met with other employees and discussed how they could exclude Williams from further contract negotiations.

The next morning, July 24, 1963, Bole prepared a petition that Williams "not be present at any future meetings

[1] Local 522 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

or contract negotiations between the E. W. Buschman Company and Local No. 522." Most of the employees were to begin work at 8:00 a.m. By special arrangement, Clouse began work at 7:00 a.m. At 7:30 a.m., Bole took the petition to Clouse's desk where Clouse signed it as chief steward. Bole and Feltner then signed the petition as assistant stewards and seventeen additional employees signed the petition. Just before 8:00 o'clock, Bole took the petition to his desk and locked it in a drawer. Bole, during his noon hour lunch period, took the petition and placed it on a desk. Company Superintendent John Graziani and Company Attorney Nicholas Bauer saw and read the petition, then took it to Company President, Rudy Vogt. Shortly after noon, Bole, Clause and Feltner were discharged. They were told they were being discharged for creating disunity or dissension among the employees. Two days later, the three discharged men received letters from the Company stating they were discharged for creating disunity among the employees; that they failed to remain at their work stations during working hours; that Clouse failed to do his work properly, and that Feltner refused to work overtime and tried to persuade others not to work overtime.

The Company maintained that the decision to fire the three stewards was made at 10:00 o'clock, before they had seen or read the contents of the petition. However, the record established that the Company was aware prior to 10:00 a.m. on July 24th that the stewards were circulating a petition to oust Representative Williams. The Company also knew the employees had rejected their offer and they were fearful of a strike.

The Trial Examiner found that the stewards were discharged for preparing and signing the petition and procuring the signatures of other employees to the petition. From these facts, the inference was drawn that the Com-

pany discharged the stewards because they opposed the proposed contract. The discharges had the additional effect of dissipating the forces within the Union which could threaten a strike.

There was substantial evidence that the Company knew the petition was being circulated; knew the contents of the petition; knew the underlying reasons for circulating the petition; and knew that the three stewards were the motivating force for rejecting the Company's offer and excluding Williams. The findings of the Board that the discharge of the three Union stewards violated Section 8(a)(1) of the Act is both reasonable and supported by substantial evidence.

Section 7 of the Act provides that employees have the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." Interference with such rights, including discharge of employees for exercise thereof, violates Section 8(a)(1). *National Labor Relations Board* v. *Washington Aluminum Co.*, 370 U.S. 9; *National Labor Relations Board* v. *City Yellow Cab Co.*, 344 F.2d 575 (C.A. 6, 1965); *Metal Blast, Inc.* v. *National Labor Relations Board*, 324 F.2d 602 (C.A. 6, 1963); *National Labor Relations Board* v. *Aurora City Lines, Inc.*, 299 F.2d 229 (C.A. 7, 1962).

In addition, the Company had shop rule No. 12 which provided:

> "12. Shop Conduct:
> "Conduct of a nature listed below is not permitted, and if indulged in, is considered cause for suspension or discharge: * * * 18. Soliciting or collecting contributions for any purpose whatsoever on our Company premises without the prior approval of management."

The Board's Order required the Company to cease and

desist from "maintaining any rule prohibiting employees from engaging in Union solicitation on plant premises during non-working time, including break periods."

The Company maintains that even if the employees were discharged for violating Rule 12, Rule 12 is a valid and enforceable rule. This Court, in *Armco Steel Corporation* v. *National Labor Relations Board*, 344 F.2d 621 (C.A. 6, 1965), held that:

> "Whatever right employees had under Section 7 to distribute Union literature on Company property may be waived by their collective bargaining representative. The contractual waiver of rights of equal or greater significance has been upheld."

See also *National Labor Relations Board* v. *Gale Products*, 337 F.2d 390 (C.A. 7, 1964), and *General Motors* v. *National Labor Relations Board*, 345 F.2d 516 (C.A. 6, 1965). Here the Local Union waived its right when the Union advised the Company by letter that it approved the Company rules. The Company's shop rules were not unilateral and were agreed to by the Union. The portion of the Board's Order invalidating this rule will not be enforced.

However, this does not invalidate the unlawful discharges. The Company maintained from the date of discharge until oral argument before this Court that the employees were not discharged because they circulated the petition in violation of shop Rule 12. This issue was raised for the first time during oral argument.

The complaint charged, and the Board found that the three shop stewards were discharged not only for violating the shop rule, but for preparing, signing and circulating the petition, protected activity under Section 7 of the Act. The thrust of the Board's finding was that the Company

wanted to remove the shop stewards who opposed the proposed contract and threatened the Company with a strike. The Board found that the employees were not discharged merely because they solicited on Company premises without the prior approval of management. Consequently, enforcement of that portion of the Board's Order invalidating shop Rule 12 is denied; enforcement of the remainder of the Order is granted.

(CAPTION OMITTED)

ORDER

(Filed July 20, 1967.)

Before: WEICK, Chief Judge, O'SULLIVAN and CELEBREZZE, Circuit Judges.

On petition to enforce an order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that enforcement of that portion of the Board's order invalidating shop Rule 12 is denied; enforcement of the remainder of the order is granted.

Entered by order of the Court.

/s/ CARL W. REUSS
Clerk

(CAPTION OMITTED)

ORDER

(Filed September 5, 1967.)

Before: WEICK, Chief Judge, O'SULLIVAN and CELEBREZZE, Circuit Judges.

Upon consideration, it is ORDERED that the Respondent's petition for rehearing herein be, and it is hereby denied.

Entered by Order of the Court.

/s/ CARL W. REUSS
Clerk

APPENDIX B

DECISION AND ORDER OF NLRB

On April 14, 1965, Trial Examiner William F. Scharnikow issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision with a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Re-

lations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Order recommended by the Trial Examiner, and orders that the Respondent, The E. W. Buschman Company, Incorporated, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order with the following modifications:[1]

1. Substitute the following paragraph for paragraph 1(a) of the Order:

"(a) Maintaining any rule prohibiting employees from engaging in union solicitation on plant premises during nonworking time, including break periods."

2. Insert the following as paragraph 2(c) of the Order and reletter the subsequent paragraphs accordingly.

"(c) Notify the above-named employees, if presently serving in the Armed Forces of the United States, of their right to full reinstatement upon application, in accordance with the Selective Service Act and the Universal Military

[1] The telephone number for Region 9, appearing at the bottom of the Appendix attached to the Trial Examiner's Decision, is amended to read: Tel. No. 684-3627.

Training and Service Act of 1948, as amended, after discharge from the Armed Forces."

3. Substitute the following paragraph for the first paragraph of the NOTICE TO ALL EMPLOYEES:

> WE WILL NOT prohibit employees from soliciting on plant premises during nonworking time, including break periods, and our no-solicitation rule is rescinded to that extent.

4. Add the following immediately above the double line at the bottom of the NOTICE TO ALL EMPLOYEES:

> NOTE: We will notify the above-named employees, if presently serving in the Armed Services of the United States, of their right to full reinstatement upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

Dated, Washington, D. C., June 28, 1965.

Frank McCulloch, Chairman
John H. Fanning, Member
Gerald A. Brown, Member
National Labor Relations Board

(Seal)

APPENDIX C

The following are the relevant statutes from the National Labor Relations Act, 29 U.S.C. Section 157 (Sec. 7 of the Act), Section 158(a)(1) (Sec. 8(a)(1) of the Act):

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.